

FILED

OCT 27 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**BINYAM MOHAMED; ABOU
ELKASSIM BRITEL; AHMED
AGIZA; MOHAMED FARAG AHMAD
BASHMILAH; BISHER AL-RAWI,**

Plaintiffs - Appellants,

v.

JEPPESEN DATAPLAN, INC.,

Defendant - Appellee,

UNITED STATES OF AMERICA,

Intervenor - Appellee.

No. 08-15693

D.C. No. 5:07-CV-02798-JW

ORDER

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judges Reinhardt, McKeown, Gould, Bybee, Milan D. Smith, Jr. and Ikuta did not participate in the deliberations or vote in this case.